

**FEDERAL PUBLIC DEFENDER
SOUTHERN DISTRICT OF OHIO
Western Division at Cincinnati**
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W. Kelly Johnson
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Steven S. Nolder
Acting Federal Public Defender

October 19, 2005

CONFIDENTIAL LEGAL MAIL - OPEN ONLY IN PRESENCE OF INMATE

Darin Martin
#03-606-061
FCI McKean
P.O. Box 8000
Bradford, PA 16701

Re: Waiver of Attorney-Client Privilege

Dear Mr. Martin:

Recently, I received the attached Order from Senior District Judge Spiegel directing me to provide an affidavit responding to your claims of ineffective assistance of counsel. In these type of situations, there exists case law that the attorney-client privilege is deemed to be waived based upon your filing of a post-conviction challenge pursuant to 28 U.S.C. § 2255.

Therefore, I am writing you to determine if you have any objection to me preparing and filing an affidavit concerning the filing of an appeal in your case. Although the attorney-client privilege may have been waived, and I could be eventually required to testify at a deposition or hearing about the issue of the filing of a notice of appeal, I wanted to touch base with you to get your opinion about this issue prior to providing the district court with an affidavit concerning this matter.

I look forward to your timely response so that I may respond to the district court to whether or not I will be submitting an affidavit in this matter. Should you have any questions or concerns about any of these matters, please notify me.

Very truly yours,

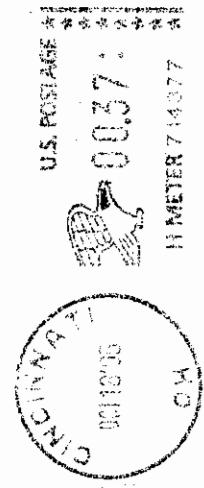
STEVEN S. NOLDER
ACTING FEDERAL PUBLIC DEFENDER

C. Ransom Hudson
Assistant Federal Public Defender

Enclosure

E X H I B I T " A "

FEDERAL PUBLIC DEFENDER
Southern District of Ohio
36 East Seventh Street, Suite 2000
Cincinnati, OH 45202-4434



Darin Martin, #03-606-061
FCI McKean
P.O. Box 8000
D 16 1 DA 15501

CONFIDENTIAL LEGAL MAIL - OPEN ONLY IN PRESENCE OF
INMATE

1670140380-00 8093 Individual

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA : NO. 1:02-CR-00105

v.

: ORDER

DARREN KEITH MARTIN :

:

This matter is before the Court on the Defendant's Motion for Reconsideration (docs. 38 & 41) and Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255 (doc. 43) as well the United States' Response to Petitioner's Motion to Vacate Sentence (doc. 48).

On July 18, 2002 Defendant was charged with bank robbery and use of a firearm during an act of violence (doc. 48). Federal Public Defender, C. Ransom Hudson, entered his appearance on July 30, 2002 as counsel to represent Defendant (Id.). On September 27, 2002, Defendant entered a plea of guilty to the bank robbery charge (the charge of using a firearm during an act of violence was dismissed) (Id.). On March 27, 2003, Defendant was sentenced by the Court to one hundred and eighty-eight (188) months incarceration followed by five (5) years of supervised release (Id.). On February 9, 2004, Defendant filed a motion for reconsideration (doc. 38) and on March 15, 2004, Defendant filed a

motion to amend (doc. 41). On April 6, 2004, the Court issued an Order requesting Defendant either re-characterize his earlier motions as a Section 2255 Motion or to file a notice withdrawing his motions (doc. 42). On April 23, 2004, Defendant filed a notice re-characterizing his motions as a Section 2255 Motion (doc. 43).

In Defendant's Section 2255 Motion (docs. 38, 41, & 43), he alleges ineffective assistance of counsel for failure, on Defense counsel's part, to explain the sentencing guidelines and to file an appeal of Defendant's one hundred eighty-eight month sentence (Id.). Defendant also alleges that the United States breached the terms of Defendant's plea agreement and influenced the Court's determination of a one hundred eighty-eight month sentence (Id.). Furthermore, Defendant argues that the language in the plea agreement is ambiguous and that any enhancements not included in the plea agreement are unconstitutional (Id.). Lastly, Defendant maintains that the United States must furnish notice to Defendant of all aggravating circumstances that justified the enhancement of his sentence (Id.).

The United States provides arguments in opposition to all of Defendant's allegations (doc. 48). However, the United States does request the Court to supplement the record by either seeking testimony from trial counsel via affidavit or via live testimony in response to Defendant's claims regarding ineffective assistance of counsel (Id.). The Court finds the United States'

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suggestion appropriate.

As such, the Court hereby ORDERS Federal Public Defender, C. Ransom Hudson, to provide forthwith to the Court an affidavit responding to Defendant's claims of ineffective assistance of counsel as relates to this matter. After Mr. Hudson has submitted his affidavit to the Court, the Court will rule on the motions before it.

SO ORDERED.

Dated: October 2, 2004

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge